

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LAMONT TARKINGTON,

Plaintiff,

v.

COUNTY OF LOS ANGELES, *et al.*,

Defendants.

Case No.: CV 18-07636-CJC-JC

**ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT [Dkt. 49]**

I. INTRODUCTION

On August 31, 2018, Plaintiff LaMont Tarkington filed this civil rights action against Defendants County of Los Angeles (“County”), Los Angeles County Sheriff’s Department (“Sheriff’s Department”), Los Angeles County Sheriff Jim McDonnell, Sheriff Detectives Lauren Brown and James Murren, Sheriff Sergeant Donald Young, and Does 1 through 10. (Dkt. 1 [Complaint, hereinafter “Compl.”].) Plaintiff generally

1 alleges that Defendants conspired to fabricate evidence, proffer false testimony, and
2 wrongfully prosecute Plaintiff in conjunction with a December 14, 2005 robbery of a
3 Bank of America in Palmdale, California.

4
5 The operative First Amended Complaint asserts claims under 42 U.S.C. § 1983 for
6 (1) fabrication of evidence, (2) conspiracy to fabricate evidence, (3) supervisory liability,
7 (4) malicious prosecution, (5) *Brady* violations, (6) conspiracy to commit *Brady*
8 violations, and (7) *Monell* violations, and state law claims for (8) deprivation of due
9 process in violation of the California Constitution, and (9) negligent supervision,
10 discipline, and retention of sheriff's deputies. (*See generally* Dkt. 35 [First Amended
11 Complaint, hereinafter "FAC"].)¹ Before the Court is Plaintiff's motion for partial
12 summary judgment as to his first claim for fabrication of evidence. (Dkt. 49.) For the
13 following reasons, the motion is **DENIED**.²

14 15 **II. BACKGROUND**

16 17 **A. Plaintiff's Arrest and Trial**

18
19 This action arises out of the investigation, prosecution, and conviction of Plaintiff
20 for a bank robbery that he claims he did not commit. On December 14, 2005, three
21 masked men robbed tellers at a Bank of America in an Albertsons supermarket in
22 Palmdale, California. (Dkt. 57 [Pl.'s Reply to Defs.' Statement of Genuine Disputes,
23 hereinafter "SGD"] 1.) They took approximately \$12,000. (SGD 2.) The stolen money
24
25

26 ¹ The Court dismissed with prejudice Plaintiff's claims for false imprisonment and violation of the
27 Unruh Civil Rights Act and Bane Act. (*See* Dkt. 44.)

28 ² Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for April 15, 2019, at 1:30 p.m. is hereby vacated and off calendar.

1 included at least one dye pack designed to explode and spray red dye, and “bait money,”
2 or bills with recorded serial numbers. (SGD 3.)
3

4 Later that day, several Sheriff’s Department deputies not party to this action
5 stopped Plaintiff and his co-defendant, Darris Allen, for a routine traffic violation about
6 60 to 70 miles away from the bank. (SGD 4–5.) Plaintiff and Allen were driving a
7 Dodge Magnum. (*Id.*) During a search of the vehicle, the deputies found a black plastic
8 bag wedged between the driver’s seat and center console that contained over \$3,000 in
9 currency stained with red dye. (Dkt. 58 [Pl.’s Response to Defs.’ Counterstatement of
10 Undisputed Material Facts, hereinafter “UMF”] B.) One of the deputies also found \$200
11 in Plaintiff’s pants pocket that had red dye and allegedly smelled of bleach. (*Id.*) After
12 the initial search of the Dodge Magnum, Plaintiff was arrested for an outstanding warrant
13 and the vehicle was impounded. (SGD 49.)
14

15 Three days after Plaintiff’s arrest and the initial search of the Dodge Magnum,
16 Defendants Brown, Murren, and Young searched the vehicle while it was in police
17 custody at a tow yard. (SGD 51.) During that search, the officers reported finding an
18 additional \$59 in coins stained with red dye and certain “clothing” items, which they
19 booked into evidence. (SGD 53, 57, 60, 61.) Photographs from the search show that a
20 red-stained T-shirt and towel were among the “clothing” items found in the vehicle,
21 (SGD 60), although the officers’ report does not mention the presence of red dye on
22 either, (SGD 62). Nonparty Deputy Moreno, who conducted the initial search of the
23 Dodge Magnum, testified that she had observed the towel and T-shirt in the back of the
24 vehicle but, at the time, did not “associate them with the crime that had occurred.” (SGD
25 23.)
26

27 On December 15, 2005, Plaintiff was charged with felony robbery and burglary.
28 (SGD 68.) At trial, the prosecutor relied on the red-stained T-shirt and towel without

1 testing either item for the presence of bank dye. (SGD 76.) Plaintiff was convicted of
2 five counts of second degree robbery on March 27, 2007. (SGD 94.) According to
3 Plaintiff, his conviction was premised largely on Defendants Brown, Murren, and
4 Young's purportedly false testimony that the T-shirt and towel seized from the Dodge
5 Magnum contained bank dye.

6 7 **B. Post-Conviction Proceedings**

8
9 Years later on October 14, 2011, Plaintiff filed a petition for habeas corpus
10 alleging ineffective assistance of counsel. (SGD 96.) Belated forensic testing of the T-
11 shirt and towel had shown that neither contained evidence of the type of red dye used in
12 bank dye packs. (SGD 100–02.) On October 20, 2017, the appellate court reversed
13 Plaintiff's convictions based on ineffective assistance of counsel because Plaintiff's
14 counsel failed to test the T-shirt and towel for bank dye prior to the trial. (*See* SGD 104;
15 Dkt. 50-2.)³ The court found that Detective Brown "effectively conducted a live 'test'
16 from the witness stand" when he testified that the T-shirt and towel smelled of pepper
17 spray and had the same red dye as the other items seized. (Dkt. 50-12 at 28.) The court
18 instructed the prosecution to either release Plaintiff from custody or retry him. (SGD
19 110.)⁴

20
21
22
23
24

³ Plaintiff requests that the Court take judicial notice of the appellate court's decision. (Dkt. 52.) Courts
25 regularly take judicial notice of "proceedings in other courts, both within and without the federal judicial
26 system, if those proceedings have a direct relation to matters at issue." *U.S. ex rel. Robinson Rancheria*
27 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citation omitted). Accordingly,
28 Plaintiff's request is GRANTED.

⁴ Defendants object to the appellate court's decision as inadmissible hearsay. Because the Court does
not rely on the decision for the truth of the matter it asserts, the Court need not rule on Defendants'
objection.

1 The State initially elected to retry Plaintiff and filed an Amended Information on
2 March 16, 2018. (FAC ¶ 179; *id.* Ex. 25.) Before proceeding to trial, the State dismissed
3 the action on June 4, 2018. (*See id.* ¶ 255.)
4

5 C. Current Proceeding

6

7 Plaintiff filed the instant action on August 31, 2018. On January 16, 2019, the
8 Court granted in substantial part Defendants’ motion to dismiss. (Dkt. 34.) The Court
9 denied the motion as to Plaintiff’s first claim for fabrication of evidence to the extent the
10 claim is premised on Defendants’ purported pretrial effort to tamper with or fabricate
11 evidence. Plaintiff now moves for partial summary judgment on his first claim for
12 fabrication of evidence. (Dkt. 49 [hereinafter “Mot.”].)
13

14 III. LEGAL STANDARD

15

16 The Court may grant summary judgment on “each claim or defense—or the part of
17 each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a).
18 Summary judgment is proper where the pleadings, the discovery and disclosure materials
19 on file, and any affidavits show that “there is no genuine dispute as to any material fact
20 and the movant is entitled to judgment as a matter of law.” *Id.*; *see also Celotex Corp. v.*
21 *Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial
22 burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp.*,
23 477 U.S. at 325. A factual issue is “genuine” when there is sufficient evidence such that
24 a reasonable trier of fact could resolve the issue in the nonmovant’s favor. *Anderson v.*
25 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” when its resolution
26 might affect the outcome of the suit under the governing law, and is determined by
27 looking to the substantive law. *Id.* “Factual disputes that are irrelevant or unnecessary
28 will not be counted.” *Id.* at 249.

1 Where the movant will bear the burden of proof on an issue at trial, the movant
2 “must affirmatively demonstrate that no reasonable trier of fact could find other than for
3 the moving party.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).
4 In contrast, where the nonmovant will have the burden of proof on an issue at trial, the
5 moving party may discharge its burden of production by either (1) negating an essential
6 element of the opposing party’s claim or defense, *Adickes v. S.H. Kress & Co.*, 398 U.S.
7 144, 158–60 (1970), or (2) showing that there is an absence of evidence to support the
8 nonmoving party’s case, *Celotex Corp.*, 477 U.S. at 325. Once this burden is met, the
9 party resisting the motion must set forth, by affidavit, or as otherwise provided under
10 Rule 56, “specific facts showing that there is a genuine issue for trial.” *Anderson*, 477
11 U.S. at 256. A party opposing summary judgment must support its assertion that a
12 material fact is genuinely disputed by (i) citing to materials in the record, (ii) showing the
13 moving party’s materials are inadequate to establish an absence of genuine dispute, or
14 (iii) showing that the moving party lacks admissible evidence to support its factual
15 position. Fed. R. Civ. P. 56(c)(1)(A)–(B). The opposing party may also object to the
16 material cited by the movant on the basis that it “cannot be presented in a form that
17 would be admissible in evidence.” Fed. R. Civ. P. 56(c)(2). But the opposing party must
18 show more than the “mere existence of a scintilla of evidence”; rather, “there must be
19 evidence on which the jury could reasonably find for the [opposing party].” *Anderson*,
20 477 U.S. at 252.

21
22 In considering a motion for summary judgment, the court must examine all the
23 evidence in the light most favorable to the nonmoving party, and draw all justifiable
24 inferences in its favor. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *T.W.*
25 *Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630–31 (9th Cir. 1987).
26 The court does not make credibility determinations, nor does it weigh conflicting
27 evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992).
28 But conclusory and speculative testimony in affidavits and moving papers is insufficient

1 to raise triable issues of fact and defeat summary judgment. *Thornhill Publ'g Co. v. GTE*
2 *Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). The evidence the parties present must be
3 admissible. Fed. R. Civ. P. 56(c). “If the court does not grant all the relief requested by
4 the motion, it may enter an order stating any material fact—including an item of damages
5 or other relief—that is not genuinely in dispute and treating the fact as established in the
6 case.” Fed. R. Civ. P. 56(g).

7 8 **IV. ANALYSIS**

9
10 Plaintiff seeks partial summary judgment on his first claim for fabrication of
11 evidence in violation of 42 U.S.C. § 1983. To state a claim for fabrication of evidence, a
12 plaintiff must show “(1) the defendant official deliberately fabricated evidence and (2)
13 the deliberate fabrication caused the plaintiff’s deprivation of liberty.” *Spencer v. Peters*,
14 857 F.3d 789, 798 (9th Cir. 2017) (citations omitted). According to Plaintiff, he is
15 entitled to summary judgment on the issue of whether “the bank dye evidence on the
16 towel and T-shirt introduced and received [in Plaintiff’s criminal trial] was false
17 evidence.” (Mot. at 5.)

18
19 It is well established that a witness who offers testimony at trial, including perjured
20 testimony, is subject to “absolute immunity from liability for civil damages under 42
21 U.S.C. § 1983.” *Franklin v. Terr*, 201 F.3d 1098, 1099 (9th Cir. 2000). “Absolute
22 witness immunity” also “extends to preparatory activities ‘inextricably tied’ to testimony,
23 such as conspiracies to testify falsely.” *Lisker v. City of L.A.*, 780 F.3d 1237, 1241 (9th
24 Cir. 2015). “Were it otherwise, a criminal defendant turned civil plaintiff could simply
25 reframe a claim to attack the preparation instead of the absolutely immune actions
26 themselves.” *Rehberg v. Paulk*, 566 U.S. 356, 368 (2012) (internal quotation marks
27 omitted). However, “immunity for pre-testimony conduct . . . is not limitless.” *Lisker*,
28 780 F.3d at 1242 (quoting *Paine v. City of Lompoc*, 265 F.3d 975, 981 (9th Cir. 2001)).

1 Rather, the Court must distinguish “conspiracies to testify falsely from ‘non-testimonial’
2 acts, such as tampering with documentary or physical evidence or preventing witnesses
3 from coming forward.” *Id.* (citation omitted). For instance, “a pretrial, out-of-court
4 effort to . . . fabricate physical evidence . . . is not inextricably tied—or tied at all—to any
5 witness’ own testimony, even [i]f a potential witness does happen to be involved.” *Id.*
6 (citation and quotation marks omitted).

7
8 Plaintiff has failed to marshal any evidence suggesting that Defendants engaged in
9 a pretrial, out-of-court effort to fabricate the existence of bank dye on the towel and T-
10 shirt. The uncontroverted evidence establishes that the red-stained towel and T-shirt
11 belong to Plaintiff and were in the Dodge Magnum at the time of Plaintiff’s arrest. (*See*
12 Dkt. 55-1 [Declaration of Koren L. Bell] Ex. A [Transcript of Plaintiff’s Testimony at
13 Trial] at 43:7–9; 54:22–26, 57:16–20 [testifying that prior to his arrest, Plaintiff spilled
14 cranberry juice and used the T-shirt and towel to clean the spill].)⁵ Detective Brown’s
15 report of the impound search catalogued both items as “numerous articles of clothing (EV
16 19 & 20) in the rear of the vehicle.” (Dkt. 50-1 at 153.) At no point does the report state
17 that either the towel or the T-shirt contained “bank dye.” (*See id.*) After the items were
18 booked, they remained in evidence storage until Plaintiff’s trial. (UMF C.) Plaintiff
19 offers no evidence that suggests Defendants contaminated the towel and T-shirt with
20 bank dye after booking them into evidence. Indeed, Plaintiff’s own post-conviction
21 testing showed that neither item tested positive for bank dye. (*See* Compl. ¶¶ 44–45;
22 FAC ¶¶ 172–74; Mot. at 16.)

23
24 Given that it is undisputed that bank dye was never found on the towel and T-shirt,
25 Plaintiff seemingly contends that Defendants “fabricated” the presence of bank dye
26 merely by documenting and photographing the red-stained towel and T-shirt as evidence
27

28 ⁵ Plaintiff raises several objections to evidence cited by Defendants. (Dkts. 57, 58.) As the Court does not rely on the contested evidence, it need not address Plaintiff’s objections.

1 relevant to the robbery. (*See* Mot. at 16–17.) Plaintiff was arrested after deputies found
2 over \$3,000 in currency stained with red dye in the Dodge Magnum and over \$200
3 stained with red dye on Plaintiff’s person. Plaintiff fails to explain how merely booking
4 other red-stained items into evidence in that context constituted a falsification of
5 evidence. After all, Plaintiff does not dispute that the towel and T-shirt contained red
6 stains, belonged to him, and were in his vehicle when he was arrested. Further, Plaintiff
7 has failed to establish that Defendants deliberately misrepresented that either item was
8 relevant to Plaintiff’s case. Because neither the prosecution nor defense tested the items
9 for the presence of bank dye prior to Plaintiff’s trial, there is no evidence that Defendants
10 knew the red stains were not bank dye. In any event, neither item was introduced at
11 Plaintiff’s preliminary hearing, at which the judge determined there was probable cause
12 for the charges against Plaintiff. (SGD 71.) Accordingly, Plaintiff has failed to explain
13 how booking the towel and T-shirt into evidence constituted “fabrication,” let alone
14 deprived Plaintiff of his constitutional rights.

15
16 To the extent Plaintiff again attempts to premise his first claim for fabrication of
17 evidence on Defendants’ conduct at trial,⁶ Defendants are entitled to immunity for the
18 reasons already stated in the Court’s prior order. (*See* Dkt. 34 at 7–8.) Because Plaintiff
19 has failed to point to any evidence that indicates Defendants engaged in a pretrial, out-of-
20 court effort to fabricate evidence of bank dye on the towel and T-shirt, Plaintiff’s motion
21 for partial summary judgment is **DENIED**.⁷

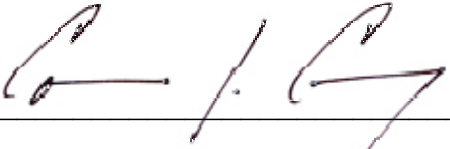
22
23
24 ⁶ *See* Mot. at 3 [“The People told the jury Plaintiff was connected to the robbery because the towel and
25 T-shirt were found in his car and had bank dye.”]; *id.* at 10 [“At the criminal trial, Deputy District
26 Attorney Frederick Mesropi used the towel and T-shirt to directly connect Plaintiff to the bank
27 robbery.”]; *id.* at 11–12 [discussing the prosecution’s introduction of the T-shirt and towel as Exhibit
28 59]; *id.* at 16 [“The People used the towel and T-shirt to directly connect Plaintiff to the bank robbery by
telling the jury that they were found in Plaintiff’s car and had bank dye.”].

⁷ In their opposition, Defendants ask the Court to “grant Defendants *sua sponte* summary judgment” on
Plaintiff’s first claim for fabrication of evidence. (Dkt. 56 at 16–17.) Given that discovery remains
open and Plaintiff’s claim seemingly encompasses more than just the towel and T-shirt, the Court finds
that granting Defendants summary judgment would be premature.

1 **V. CONCLUSION**

2
3 For the foregoing reasons, Plaintiff's motion for partial summary judgment is
4 **DENIED.**

5
6
7
8 DATED: April 8, 2019

9
10 
11 _____
12 CORMAC J. CARNEY
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28